

NO. 23290

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

IN THE INTEREST OF DOE CHILDREN: JOHN DOE, Born on
October 9, 1991; JOHN DOE, Born on November 14, 1992;
and JOHN DOE, Born on March 31, 1995, Minors

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S No. 96-04282)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe, and Foley, JJ.)

In this child protective services case initiated by
Petitioner-Appellee Department of Human Services, State of
Hawai'i (DHS), Respondent-Appellant (Father), the alleged natural
father of John Doe, born on October 9, 1991 (John Doe 1), and the
presumed natural father of John Doe, born on November 14, 1992
(John Doe 2) (John Does 1 and 2 are hereinafter collectively
referred to as "Children"), appeals from:

- the December 21, 1999 Decision of the Family Court of the First Circuit (the family court), holding, in relevant part, that there exists clear and convincing evidence that Father and Children's Mother (Mother) were not presently willing and able, and it was not reasonably foreseeable that they will become willing and able, to provide Children with a safe family home, even with the assistance of a service plan, within a reasonable period of time (December 21, 1999 Decision);
- the family court's February 1, 2000 Findings of Fact and Conclusions of Law re Children, that explained the bases for the family court's December 21, 1999 Decision;
- the February 18, 2000 Orders Concerning Child Protective Act, ordering, among other things, that Father and Mother's parental and custodial rights and duties in Children be

divested and that DHS be awarded permanent custody of Children; and

- the January 4, 2000 Letters of Permanent Custody that, among other things, appointed the Director of DHS permanent custodian of Children.

We affirm.

A.

Father contends in his opening brief that the family court "erred in granting DHS's Motion for Order Awarding Permanent Custody and Establishing a Permanent Plan because DHS did not prove by clear and convincing evidence that either parent could not provide a safe home for [Children]." Father objects to eighty-two (82) of the family court's findings of fact and three (3) of the family court's conclusions of law. He points out that he and Mother have terminated their relationship and have both been sober for months. Therefore, he contends, reunification with Children "is within reach, far closer than it had ever been in the past."

Based on our review of the record, however, we conclude that there is substantial evidence to support the family court's findings and conclusions, at least as to Father.

B.

Father's second complaint is that although an August 19, 1999 DHS report noted that "[t]his case is headed toward reunification with [Mother because s]he continues to demonstrate good commitment to the welfare of [Children] and is making good effort to learn additional parenting skills to deal

appropriately with [Children's] behavior," DHS arbitrarily changed its recommendation eleven days later, thus raising questions about the validity of its position.

The record indicates, however, that DHS had requested, and the family court had been poised to grant, permanent custody in 1998. It was only after Mother pleaded for a second chance that the permanent custody hearings were continued. Although DHS thereafter attempted to work with Mother, and Mother made some progress, the point ultimately arrived when DHS felt that it was futile to continue to seek reunification of Mother and Children. Moreover, the August 19, 1999 DHS report never indicated that the case was headed towards a reunification with Father.

In light of the record on appeal, we conclude that Father's second argument is meritless.

C.

Much of Father's brief is devoted to Father's argument that *Mother's* effort to reunify with Children should be supported. Since Mother's appeal is not before us, however, we

need not address the propriety of the family court's decision to divest Mother of her parental rights in Children.

Affirmed.

DATED: Honolulu, Hawai'i, April 2, 2001.

Dean T. Nagamine for
respondent-appellant-father.

Jay K. Goss and Mary Anne
Magnier, Deputy Attorneys
General, State of Hawai'i,
for petitioner-appellee
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Gilbert C. Doles for
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